



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 29, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0146

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	5.001 – Standards and Duties, 5.001-POL 6. Employees May Use Discretion	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) wrongfully charged him with organized retail theft when he was misidentified in a photograph montage. The Complainant also alleged he was improperly included in the High Utilizer Initiative (HUI) list. The Complainant alleged that NE#1's actions were due to bias and unreasonable discretion.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee in this case.

On June 26, 2023, OIG certified OPA's investigation as thorough and objective but declined to certify the investigation as timely. Specifically, OIG determined that the notice of receipt of complaint and classification notice were untimely sent to the named employee. OPA acknowledges that these notices were not timely. OPA notes that this delay did not impact this expedited investigation overall and that OPA's investigation was completed within 180 days as required by ordinance and collective bargaining agreement. OPA appreciates OIG noting the above issues and thanks OIG for its continued partnership.

SUMMARY OF INVESTIGATION:

OPA received a complaint and opened an intake investigation. During its investigation, OPA reviewed the OPA complaint, Certification for Determination of Probable Cause (Certification), incident and supplemental reports, "Identify This Person" bulletin, and HUI 2023 Report. OPA also interviewed the Complainant.



A. OPA Complaint

The Complainant filed a web-based complaint. The Complainant wrote that two detectives accused him of robbing Business #1 because he fit the profile, though he had never been inside the store. OPA identified NE#1 as the primary detective investigating this case.

B. Certification for Determination of Probable Cause (Certification)

NE#1 wrote the Certification. NE#1 wrote that there was probable cause to believe the Complainant committed organized retail theft in the first degree, RCW 9A.56.350, and based that belief on the following. NE#1 wrote that on several occasions, the Complainant entered Business #1 and stole merchandise. NE#1 wrote that the Complainant usually had an accomplice or accomplices. NE#1 wrote that Business #1 surveillance cameras captured the Complainant peering inside the store, apparently waiting for an opportunity to enter. NE#1 wrote that the Complainant would enter the store, steal merchandise, make a hasty exit, and walk or run to a waiting vehicle nearby. NE#1 wrote that all thefts occurred at Business #1. NE#1 wrote that on February 18, 2022, he created an "Identify This Person" bulletin that contained images of the Complainant and disseminated it to Seattle Police Department (SPD) employees. NE#1 wrote that a sergeant and two officers identified the person as the Complainant based on multiple past dealings with him.

NE#1 documented six separate incidents involving the Complainant on the following dates: December 22, 2021 (16 items worth \$1,485 stolen); January 12, 2022 (24 items worth \$1,730 stolen); January 14, 2022 (no theft occurred because the Complainant appeared dissuaded from entering due to a Business #1 employee standing by the entrance); January 24, 2022 (24 items worth \$1,955 stolen); February 5, 2022 (21 items worth \$1,307 stolen); and February 26, 2022 (two items worth \$100 stolen). NE#1 wrote that the Complainant and his accomplices, in total, stole 87 items worth \$6,577. NE#1 included multiple photographs of the suspects and getaway vehicles used in the thefts. All suspects depicted wore masks.

NE#1 wrote, "The common threads in the above-described incidents are that [the Complainant] is always involved, and high-value Thefts are overtly committed while the store is open for business." NE#1 also wrote, "[The Complainant's] Felonious Thefts have become so commonplace at [Business #1] that several of the store's employees recognize [the Complainant] on sight." NE#1 wrote that several SPD officers identified the Complainant in the bulletin NE#1 disseminated, even though the Complainant wore a mask and was heavily clothed during the thefts. NE#1 signed the Certification under penalty of perjury on March 3, 2022.

C. Supplement Report

In response to the February 5, 2022, theft incident, NE#1 wrote a supplement report. NE#1 wrote that on February 24, 2022, at 8:00 AM, he met with Community Member #1 (CM#1) and Community Member #2 (CM#2)— security officers. NE#1 wrote that the community members have not met or seen the Complainant in person but have seen the suspect wearing a face mask covering most of his face on surveillance cameras and still pictures. NE#1 wrote that he showed each community member a photograph montage of five filler subjects and the Complainant. NE#1 wrote that CM#1 did not make an identification but commented that the Complainant's head shape looked familiar. CM#1 also reported that a filler subject had a facial structure like the suspect's facial structure, but the filler subject's skin tone was too light. NE#1 wrote that CM#2 was uncomfortable identifying anyone as the suspect.



D. High Utilizer Initiative (HUI)

The Seattle City Attorney's Office launched HUI, a collaborative partnership—with SPD, the King County Prosecuting Attorney's Office, the King County Jail, and service providers—to identify and reduce the impact of individuals responsible for repeat criminal activity across Seattle.¹ In total, HUI included 168 individuals who were responsible for almost 3,500 misdemeanor referrals since 2017. HUI aims "to ensure individuals committing the most crime receive focused attention."

E. OPA Interview

OPA interviewed the Complainant. The Complainant said he was charged with organized retail theft in the first degree because he was misidentified in a photograph montage. The Complainant said the lead detective had prior knowledge of him and falsely identified him as the person depicted on the surveillance camera. The Complainant believed he was unfairly targeted as a criminal because he was on the HUI list, made known to him by a reporter.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 engaged in biased-based policing.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." SPD Policy 5.140-POL.

Here, the Complainant alleged that NE#1 was biased against him because he was on the HUI list. Being on the HUI list would not fall under the ambit of SPD Policy 5.140 because it is not a protected class or a discernible personal characteristic. Even if OPA assumed that being on the HUI list is a protected class or a discernible personal characteristic, there is no evidence to indicate that NE#1 was biased against the Complainant. NE#1's Certification documented NE#1 finding probable cause that the Complainant committed organized retail theft based on evidence he collected from six independent incidents, including surveillance footage, witness statements, and positive identifications by three SPD officers. Notably, the Certification did not mention the Complainant's inclusion in the HUI list. Additionally, OPA found that inclusion on the HUI list was determined by the Seattle City Attorney's Office, not individual police officers. There is no evidence to suggest that NE#1 was biased against the Complainant based on his inclusion in the HUI list, conducted an inadequate primary investigation, or engaged in bias-based policing.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

¹ See <https://www.seattle.gov/documents/Departments/CityAttorney/Reports/HUI2023Report.pdf>.



Named Employee #1 – Allegation #2

5.001 – Standards and Duties, 5.001-POL 6. Employees May Use Discretion

The Complainant alleged that NE#1 abused his discretion.

As indicated in SPD Policy 5.001-POL-6, “employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “discretion is proportional to the severity of the crime or public safety issue being addressed.” SPD Policy 5.001-POL-6.

Here, the Complainant alleged that NE#1 wrongfully charged him with organized retail theft when he was misidentified in a photograph montage. SPD did not make the charging decision in the Complainant’s case. The King County Prosecuting Attorney’s Office filed criminal charges against the Complainant. Additionally, there is no evidence that NE#1 intentionally misused the photograph montage process. In fact, NE#1 documented in his supplement report that CM#1 and CM#2 did not positively identify the Complainant but noted similarities between the suspect—whose face was covered with a mask—and the Complainant. NE#1 documented other evidence in his Certification—such as surveillance footage, witness statements, and identifications by three SPD officers—to establish probable cause. See WPIC 120.07 (defining “probable cause” to mean “facts that would cause a reasonably cautious officer to believe that the person had committed that crime”). The “misidentification” alleged by the Complainant is a legal defense against his charges, not a policy violation.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**